

MICHIGAN BUSINESS TAX ACT (EXCERPT)

Act 36 of 2007

CHAPTER 1

208.1101 Short title; legislative intent.

Sec. 101. (1) This act shall be known and may be cited as the "Michigan business tax act".

(2) It is the intent of the legislature that the tax levied under this act and the various credits available under this act will serve to improve the economic condition of this state, foster continued and diverse economic growth in this state, and enable this state to compete fairly and effectively in the world marketplace for economic development opportunities that will provide for and protect the health, safety, and welfare of the citizens of this state, now and in the future.

History: 2007, Act 36, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Popular name: MBT

208.1103 Terms; meanings and references.

Sec. 103. A term used in this act and not defined differently shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required. A reference in this act to the internal revenue code includes other provisions of the laws of the United States relating to federal income taxes.

History: 2007, Act 36, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Popular name: MBT

208.1105 Definitions; "B".

Sec. 105. (1) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act.

(2) "Business income" means that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders. For an organization that is a mutual or cooperative electric company exempt under section 501(c)(12) of the internal revenue code, business income equals the organization's excess or deficiency of revenues over expenses as reported to the federal government by those organizations exempt from the federal income tax under the internal revenue code, less capital credits paid to members of that organization, less income attributed to equity in another organization's net income, and less income resulting from a charge approved by a state or federal regulatory agency that is restricted for a specified purpose and refundable if it is not used for the specified purpose. For a tax-exempt person, business income means only that part of federal taxable income derived from unrelated business activity. For an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes, business income is that part of federal taxable income derived from transactions, activities, and sources in the regular course of the taxpayer's trade or business, including the following:

(a) All income from tangible and intangible property if the acquisition, rental, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(b) Gains or losses incurred in the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(c) Income derived from isolated sales, leases, assignment, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving property if the property is or was used in the taxpayer's trade or business operation.

(d) Income derived from the sale of a business.

(e) Income not included in business income for an individual, estate, partnership organized exclusively for

estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes includes, but is not limited to, the following:

(i) Personal investment activity, including interest, dividends, and gains from a personal investment portfolio or retirement account.

(ii) Disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2007, Act 145, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 3 of Act 145 of 2007 provides:

"Enacting section 3. Sections 281 and 451 of the Michigan business tax act, 2007 PA 36, MCL 208.1281 and 208.1451, as added by this amendatory act, and sections 105, 111, 113, 201, 239, 265, 403, 405, 409, 413, 445, 447, 515, and 601 of the Michigan business tax act, 2007 PA 36, MCL 208.1105, 208.1111, 208.1113, 208.1201, 208.1239, 208.1265, 208.1403, 208.1405, 208.1409, 208.1413, 208.1445, 208.1447, 208.1515, and 208.1601, as amended by this amendatory act, take effect January 1, 2008 and apply to all business activity occurring after December 31, 2007."

Popular name: MBT

208.1107 Definitions; "C" and "D".

Sec. 107. (1) "Client" means an entity whose employment operations are managed by a professional employer organization.

(2) "Compensation" means all wages, salaries, fees, bonuses, commissions, other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayers, and any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to a pension, retirement, or profit sharing plan other than those payments attributable to unfunded accrued actuarial liabilities, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payment of fees for the administration of health and welfare and noninsured benefit plans. Compensation for a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, includes payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers.

(b) Except as otherwise provided in this subsection, payments to an independent contractor.

(c) Payments to state and federal unemployment compensation funds.

(d) The employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) Payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to 45 USC 51 to 60.

(3) "Corporation" means a taxpayer that is required or has elected to file as a corporation under the internal revenue code.

(4) "Department" means the department of treasury.

History: 2007, Act 36, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Popular name: MBT

208.1109 Definitions; E and F.

Sec. 109. (1) "Employee" means an employee as defined in section 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes is prima facie considered an employee.

(2) "Employer" means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes is prima facie considered an employer.

(3) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if section 168(k) and section 199 of the internal

revenue code were not in effect.

(4) "Financial institution" means that term as defined under chapter 2B.

(5) "Foreign operating entity" means a United States person that satisfies each of the following:

(a) Would otherwise be a part of a unitary business group that has at least 1 person included in the unitary business group that is taxable in this state.

(b) Has substantial operations outside the United States, the District of Columbia, any territory or possession of the United States except for the commonwealth of Puerto Rico, or a political subdivision of any of the foregoing.

(c) At least 80% of its income is active foreign business income as defined in section 861(c)(1)(B) of the internal revenue code.

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2008, Act 434, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 434 of 2008 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2008."

Popular name: MBT

208.1111 Definitions; G to O.

Sec. 111. (1) "Gross receipts" means the entire amount received by the taxpayer as determined by using the taxpayer's method of accounting used for federal income tax purposes, less any amount deducted as bad debt for federal income tax purposes that corresponds to items of gross receipts included in the modified gross receipts tax base for the current tax year or a past tax year phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter, from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

(a) Proceeds from sales by a principal that the taxpayer collects in an agency capacity solely on behalf of the principal and delivers to the principal.

(b) Amounts received by the taxpayer as an agent solely on behalf of the principal that are expended by the taxpayer for any of the following:

(i) The performance of a service by a third party for the benefit of the principal that is required by law to be performed by a licensed person.

(ii) The performance of a service by a third party for the benefit of the principal that the taxpayer has not undertaken a contractual duty to perform.

(iii) Principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal.

(iv) A capital asset of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or for real property owned or leased by the principal.

(v) Property not described under subparagraph (iv) that is purchased by the taxpayer on behalf of the principal and that the taxpayer does not take title to or use in the course of performing its contractual business activities.

(vi) Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal.

(c) Amounts that are excluded from gross income of a foreign corporation engaged in the international operation of aircraft under section 883(a) of the internal revenue code.

(d) Amounts received by an advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person.

(e) Amounts received by a newspaper to acquire advertising space not owned by that newspaper in another newspaper on behalf of another person. This subdivision does not apply to any consideration received by the taxpayer for acquiring that advertising space.

(f) Notwithstanding any other provision of this section, amounts received by a taxpayer that manages real property owned by a third party that are deposited into a separate account kept in the name of that third party and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that third party.

(g) Proceeds from the taxpayer's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes. This subdivision does not apply to a taxpayer that during the tax year both buys and sells any receivables.

- (h) Proceeds from any of the following:
 - (i) The original issue of stock or equity instruments or equity issued by a regulated investment company as that term is defined under section 851 of the internal revenue code.
 - (ii) The original issue of debt instruments.
 - (i) Refunds from returned merchandise.
 - (j) Cash and in-kind discounts.
 - (k) Trade discounts.
 - (l) Federal, state, or local tax refunds.
 - (m) Security deposits.
 - (n) Payment of the principal portion of loans.
 - (o) Value of property received in a like-kind exchange.
 - (p) Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible, intangible, or real property, less any gain from the disposition or reorganization to the extent that the gain is included in the taxpayer's federal taxable income, if the property satisfies 1 or more of the following:
 - (i) The property is a capital asset as defined in section 1221(a) of the internal revenue code.
 - (ii) The property is land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code.
 - (iii) The property is used in a hedging transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily to manage the risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; interest rate fluctuations; or commodity price fluctuations. For purposes of this subparagraph, the actual transfer of title of real or tangible personal property to another person is not a hedging transaction. Only the overall net gain from the hedging transactions entered into during the tax year is included in gross receipts. As used in this subparagraph, "hedging transaction" means that term as defined under section 1221 of the internal revenue code regardless of whether the transaction was identified by the taxpayer as a hedge for federal income tax purposes, provided, however, that transactions excluded under this subparagraph and not identified as a hedge for federal income tax purposes shall be identifiable to the department by the taxpayer as a hedge in its books and records.
 - (iv) The property is investment and trading assets managed as part of the person's treasury function. For purposes of this subparagraph, a person principally engaged in the trade or business of purchasing and selling investment and trading assets is not performing a treasury function. Only the overall net gain from the treasury function incurred during the tax year is included in gross receipts. As used in this subparagraph, "treasury function" means the pooling and management of investment and trading assets for the purpose of satisfying the cash flow or liquidity needs of the taxpayer's trade or business.
 - (q) The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.
 - (r) For a sales finance company, as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under section 78c(a)(4) or (5) of the securities exchange act of 1934, 15 USC 78c, or a person included in the unitary business group of that broker or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, amounts realized from the repayment, maturity, sale, or redemption of the principal of a loan, bond, or mutual fund, certificate of deposit, or similar marketable instrument provided such instruments are not held as inventory.
 - (s) For a sales finance company, as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under section 78c(a)(4) or (5) of the securities exchange act of 1934, 15 USC 78c, or a person included in the unitary business group of that broker or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the principal amount received under a repurchase agreement or other transaction properly characterized as a loan.
 - (t) For a mortgage company, proceeds representing the principal balance of loans transferred or sold in the tax year. For purposes of this subdivision, "mortgage company" means a person that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and has greater than 90% of its revenues, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.
 - (u) For a professional employer organization, any amount charged by a professional employer organization

that represents the actual cost of wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer arrangement.

(v) Any invoiced items used to provide more favorable floor plan assistance to a person subject to the tax imposed under this act than to a person not subject to this tax and paid by a manufacturer, distributor, or supplier.

(w) For an individual, estate, or other person organized for estate or gift planning purposes, amounts received other than those from transactions, activities, and sources in the regular course of the taxpayer's trade or business. For purposes of this subdivision, all of the following apply:

(i) Amounts received from transactions, activities, and sources in the regular course of the taxpayer's business include, but are not limited to, the following:

(A) Receipts from tangible and intangible property if the acquisition, rental, lease, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(B) Receipts received in the course of the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(C) Receipts derived from isolated sales, leases, assignments, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving tangible, intangible, or real property if the property is or was used in the taxpayer's trade or business operation.

(D) Receipts derived from the sale of an interest in a business that constitutes an integral part of the taxpayer's regular trade or business.

(E) Receipts derived from the lease or rental of real property.

(ii) Receipts excluded from gross receipts include, but are not limited to, the following:

(A) Receipts derived from investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the taxpayer's trade or business.

(B) Receipts derived from the disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

(x) Receipts derived from investment activity by a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual or by a common trust fund established under the collective investment funds act, 1941 PA 174, MCL 555.101 to 555.113. For purposes of this subdivision, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendent of that individual or related person, or a trust benefiting that individual or 1 or more persons related to that individual.

(y) Interest income and dividends derived from obligations or securities of the United States government, this state, or any governmental unit of this state. As used in this subdivision, "governmental unit" means that term as defined in section 3 of the shared credit rating act, 1985 PA 227, MCL 141.1053.

(z) Dividends and royalties received or deemed received from a foreign operating entity or a person other than a United States person, including, but not limited to, the amounts determined under section 78 of the internal revenue code and sections 951 to 964 of the internal revenue code, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(aa) To the extent not deducted as purchases from other firms under section 203, each of the following:

(i) Sales or use taxes collected from or reimbursed by a consumer or other taxes the taxpayer collected directly from or was reimbursed by a purchaser and remitted to a local, state, or federal tax authority, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(ii) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the internal revenue code or other applicable state law, phased in over a 3-year period starting with 60% of that amount in the 2008 tax year, 75% in the 2009 tax year, and 100% in the 2010 tax year and each tax year thereafter.

(iii) In the case of receipts from the sale of motor fuel by a person with a motor fuel tax license or a retail dealer, an amount equal to federal and state excise taxes paid by any person on such motor fuel under section 4081 of the internal revenue code or under other applicable state law, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(iv) In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license

to sell, distribute, or produce those products, an amount equal to federal and state excise taxes paid by any person on or for such beer, wine, or intoxicating liquor under subtitle E of the internal revenue code or other applicable state law, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(v) In the case of receipts from the sale of communication, video, internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority and authorized to be charged on a customer's bill or invoice, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter. This subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.

(vi) In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority and authorized to be charged on a customer's bill or invoice, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter. This subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.

(vii) Any deposit required under any of the following, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter:

(A) 1976 IL 1, MCL 445.571 to 445.576.

(B) R 436.1629 of the Michigan administrative code.

(C) R 436.1723a of the Michigan administrative code.

(D) Any substantially similar beverage container deposit law of another state.

(viii) An excise tax collected pursuant to the airport parking tax act, 1987 PA 248, MCL 207.371 to 207.383, collected from or reimbursed by a consumer and remitted as provided in the airport parking tax act, 1987 PA 248, MCL 207.371 to 207.383, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(bb) Amounts attributable to an ownership interest in a pass-through entity, regulated investment company, real estate investment trust, or cooperative corporation whose business activities are taxable under section 203 or would be subject to the tax under section 203 if the business activities were in this state. For purposes of this subdivision:

(i) "Cooperative corporation" means those organizations described under subchapter T of the internal revenue code.

(ii) "Pass-through" entity means a partnership, subchapter S corporation, or other person, other than an individual, that is not classified for federal income tax purposes as an association taxed as a corporation.

(iii) "Real estate investment trust" means that term as defined under section 856 of the internal revenue code.

(iv) "Regulated investment company" means that term as defined under section 851 of the internal revenue code.

(cc) For a regulated investment company as that term is defined under section 851 of the internal revenue code, receipts derived from investment activity by that regulated investment company.

(dd) For fiscal years that begin after September 30, 2009, unless the state budget director certifies to the state treasurer by January 1 of that fiscal year that the federally certified rates for actuarial soundness required under 42 CFR 438.6 and that are specifically developed for Michigan's health maintenance organizations that hold a contract with this state for medicaid services provide explicit adjustment for their obligations required for payment of the tax under this act, amounts received by the taxpayer during that fiscal year for medicaid premium or reimbursement of costs associated with service provided to a medicaid recipient or beneficiary.

(2) "Insurance company" means an authorized insurer as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106.

(3) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 2008 or, at the option of the taxpayer, in effect for the tax year.

(4) "Inventory" means, except as provided in subdivision (e), all of the following:

(a) The stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale.

(b) Finished goods, goods in process, and raw materials of a manufacturing business purchased from another person.

(c) For a person that is a new motor vehicle dealer licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, floor plan interest expenses for new motor vehicles. For purposes of this subdivision, "floor plan interest" means interest paid that finances any part of the person's purchase of new motor vehicle inventory from a manufacturer, distributor, or supplier. However, amounts attributable to any invoiced items used to provide more favorable floor plan assistance to a person subject to the tax imposed under this act than to a person not subject to this tax is considered interest paid by a manufacturer, distributor, or supplier.

(d) For a person that is a securities trader, broker, or dealer or a person included in the unitary business group of that securities trader, broker, or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the cost of securities as defined under section 475(c)(2) of the internal revenue code and for a securities trader the cost of commodities as defined under section 475(e)(2) and for a broker or dealer the cost of commodities as defined under section 475(e)(2)(b), (c), and (d) of the internal revenue code, excluding interest expense other than interest expense related to repurchase agreements. As used in this subdivision:

(i) "Broker" means that term as defined under section 78c(a)(4) of the securities exchange act of 1934, 15 USC 78c.

(ii) "Dealer" means that term as defined under section 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

(iii) "Securities trader" means a person that engages in the trade or business of purchasing and selling investments and trading assets.

(e) Inventory does not include either of the following:

(i) Personal property under lease or principally intended for lease rather than sale.

(ii) Property allowed a deduction or allowance for depreciation or depletion under the internal revenue code.

(5) "Officer" means an officer of a corporation other than a subchapter S corporation, including all of the following:

(a) The chairperson of the board.

(b) The president, vice president, secretary, or treasurer of the corporation or board.

(c) Persons performing similar duties to persons described in subdivisions (a) and (b).

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2007, Act 145, Eff. Jan. 1, 2008;—Am. 2007, Act 207, Eff. Jan. 1, 2008;—Am. 2008, Act 433, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 3 of Act 145 of 2007 provides:

"Enacting section 3. Sections 281 and 451 of the Michigan business tax act, 2007 PA 36, MCL 208.1281 and 208.1451, as added by this amendatory act, and sections 105, 111, 113, 201, 239, 265, 403, 405, 409, 413, 445, 447, 515, and 601 of the Michigan business tax act, 2007 PA 36, MCL 208.1105, 208.1111, 208.1113, 208.1201, 208.1239, 208.1265, 208.1403, 208.1405, 208.1409, 208.1413, 208.1445, 208.1447, 208.1515, and 208.1601, as amended by this amendatory act, take effect January 1, 2008 and apply to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 433 of 2008 provides:

"Enacting section 1. This amendatory act is retroactive and effective for taxes levied on and after January 1, 2008."

Popular name: MBT

208.1113 Definitions; P and R.

Sec. 113. (1) "Partner" means a partner or member of a partnership.

(2) "Partnership" means a taxpayer that is required to or has elected to file as a partnership for federal income tax purposes.

(3) "Person" means an individual, firm, bank, financial institution, insurance company, limited partnership, limited liability partnership, copartnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, receiver, estate, trust, or any other group or combination of groups acting as a unit.

(4) "Professional employer organization" means an organization that provides the management and administration of the human resources of another entity by contractually assuming substantial employer rights and responsibilities through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

(a) Maintaining a right of direction and control of employees' work, although this responsibility may be shared with the other entity.

- (b) Paying wages and employment taxes of the employees out of its own accounts.
- (c) Reporting, collecting, and depositing state and federal employment taxes for the employees.
- (d) Retaining a right to hire and fire employees.
- (5) Professional employer organization is not a staffing company as that term is defined in subsection (6).
- (6) "Purchases from other firms" means all of the following:
 - (a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.
 - (b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.
 - (c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.
 - (d) For a staffing company, compensation of personnel supplied to customers of staffing companies. As used in this subdivision:
 - (i) "Compensation" means that term as defined under section 107 plus all payroll tax and worker's compensation costs.
 - (ii) "Staffing company" means a taxpayer whose business activities are included in industry group 736 under the standard industrial classification code as compiled by the United States department of labor.
 - (e) For a person included in major group 15, 16, or 17 under the standard industrial classification code as compiled by the United States department of labor that does not qualify for a credit under section 417, both of the following:
 - (i) Payments to subcontractors for a construction project under a contract specific to that project.
 - (ii) To the extent not deducted under subdivisions (a) and (c), payments for materials deducted as purchases in determining the cost of goods sold for the purpose of calculating total income on the taxpayer's federal income tax return.
 - (f) For the 2008 tax year and each tax year after 2008, all film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.
 - (g) For a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637.
 - (7) "Revenue mile" means the transportation for a consideration of 1 net ton in weight or 1 passenger the distance of 1 mile.

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2007, Act 145, Eff. Jan. 1, 2008;—Am. 2008, Act 97, Imd. Eff. Apr. 15, 2008;—Am. 2008, Act 177, Eff. Dec. 31, 2007;—Am. 2008, Act 472, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 3 of Act 145 of 2007 provides:

"Enacting section 3. Sections 281 and 451 of the Michigan business tax act, 2007 PA 36, MCL 208.1281 and 208.1451, as added by this amendatory act, and sections 105, 111, 113, 201, 239, 265, 403, 405, 409, 413, 445, 447, 515, and 601 of the Michigan business tax act, 2007 PA 36, MCL 208.1105, 208.1111, 208.1113, 208.1201, 208.1239, 208.1265, 208.1403, 208.1405, 208.1409, 208.1413, 208.1445, 208.1447, 208.1515, and 208.1601, as amended by this amendatory act, take effect January 1, 2008 and apply to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 177 of 2008 provides:

"Enacting section 1. This amendatory act is retroactive and effective for taxes levied after December 31, 2007."

Enacting section 2 of Act 472 of 2008 provides:

"Enacting section 2. This amendatory act is retroactive and effective for taxes levied on and after January 1, 2008."

Popular name: MBT

208.1115 Definitions; "S".

Sec. 115. (1) "Sale" or "sales" means, except as provided in subdivision (e), the amounts received by the taxpayer as consideration from the following:

(a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.

(b) The performance of services that constitute business activities.

(c) The rental, lease, licensing, or use of tangible or intangible property, including interest, that constitutes business activity.

(d) Any combination of business activities described in subdivisions (a), (b), and (c).

(e) For taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities.

(2) "Shareholder" means a person who owns outstanding stock in a business or is a member of a business entity that files as a corporation for federal income tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

(3) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country, or a political subdivision of any of the foregoing.

(4) "Subchapter S corporation" means a corporation electing taxation under subchapter S or chapter 1 of subtitle A of the internal revenue code, sections 1361 to 1379 of the internal revenue code.

History: 2007, Act 36, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Popular name: MBT

208.1117 Definitions; "T" and "U".

Sec. 117. (1) "Tangible personal property" means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) "Tax" means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) "Tax-exempt person" means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

(a) An organization exempt under section 501(c)(12) or (16) of the internal revenue code.

(b) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code but for its failure to meet the requirement in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(4) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2008, then those referenced tax years are deemed those same tax years during which former 1975 PA 228 was in effect.

(5) "Taxpayer" means a person or a unitary business group liable for a tax, interest, or penalty under this act.

(6) "Unitary business group" means a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

(7) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(8) "Unrelated business activity" means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2009, Act 142, Eff. Dec. 31, 2007.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 142 of 2009 provides:

"Enacting section 1. This amendatory act is retroactive and is effective for tax years beginning after December 31, 2007."

Popular name: MBT